

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	CHAPTER 11
)	
SCI DIRECT, LLC, et al., ¹)	Case Nos. 17-61735, 17-61736,
)	17-61737, and 17-61738
Debtors)	(Jointly Administered)
)	
)	Chief Judge Russ Kendig
)	
MARK D. KOZEL, solely in his capacity)	Adv. Proc. No. 19-06030
As Creditor Trustee of the Suarez Corporation)	
Creditor Trust,)	
)	
Plaintiff,)	
v.)	
)	
FOWLER & ASSOCIATES, INC.,)	
)	
Defendant.)	
)	

**MOTION TO VACATE JUDGMENT AGAINST DEFENDANT FOWLER &
ASSOCIATES, INC.**

Pursuant to 7(B) and 60(B)(4)(6) of the Federal Rules of Civil Procedure, Defendant Fowler & Associates, Inc. (hereafter “Fowler”) move this Court for an Order vacating the judgment against Fowler, rendered in this case on October 29, 2019, for the reasons stated in the Memorandum, as Defendant Fowler never received the Summons and Complaint and Fowler has a valid defense to the Plaintiff’s Complaint and is entitled to relief.

¹ The Debtors are SCI Direct, LLC, Case No. 17-61735; Suarez Corporation Industries, Case No. 17-61736, Retail Partner Enterprises, LLC, Case No. 17-61737, and Media Service Corporation, Case No. 17-61738.

MEMORANDUM

1. This Motion is timely as to Defendant Fowler, as Judgment was entered on October 29, 2019.

2. The Affidavit attached hereto provide operative facts which justify relief under Rule 60 (B)(4)(6).

3. The Complaint is based on an allegation of a preferential transfer.

4. The Plaintiff's Application for Entry of Default states that on August 24, 2019 that the Plaintiff served the Summons and Complaint on Fowler via regular mail and certified mail to its Statutory Agent, Sue Fowler.

5. The Affidavit attached hereto, signed by Sue Fowler, states she never received the Summons and Complaint by regular or certified mail. What happened to the green card on the certified mail?

6. Thusly, this Court never acquired personal jurisdiction over Fowler and the judgment is void.

7. Additionally, Sue Fowler possessing personal knowledge of the business by and between Fowler & Associates, Inc. and SCI states that the invoices involved the renewal of the Debtor's email software license. She further states that the Fowler Invoice #1104734, dated 7-31-2017, was paid by Debtor on 7-26-2017 and Invoice #110464, dated 7-12-2017, was paid on 7-5-2017.

8. The payments were a contemporaneous exchange for new value given to the Debtor.

Fowler is entitled to relief under Rule 60(B)(4)(6). See GTE Automatic Electric, Inc., v. ARC Industries, Inc., (1976) 47 O.S.2d 146. The Home Savings & Loan Company, v. Captiva

Hong Kong Limited, 2004-Ohio-6375. See National City Bank, v. Joseph A. Rini, 2005-Ohio-4041.

It is respectfully submitted that Fowler & Associates, Inc., having shown to this Court that it has a meritorious defense, is entitled to relief from the judgement.

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Respectfully submitted by:

/s/ Gerald L. Baker
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Canton, OH 44718
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COUNSEL TO FOWLER & ASSOCIATES, INC.

¹ The Debtors are SCI Direct, LLC, Case No. 17-61735; Suarez Corporation Industries, Case No. 17-61736, Retail Partner Enterprises, LLC, Case No. 17-61737, and Media Service Corporation, Case No. 17-61738.

PROOF OF SERVICE

I, Gerald L. Baker, hereby certify that on December 9, 2019, a true and correct copy of the foregoing was served via the Court's CM/ECF system and electronic mail notice list and upon the following via regular mail:

Maria G. Carr
Scott N. Opincar
McDonald Hopkins, LLC
600 Superior Ave. E, Suite 2100
Cleveland, OH 44114

/s/ Gerald L. Baker
Gerald L. Baker (0023703)
Counsel for Defendant Fowler & Associates, Inc.

**UNITED STATES BANKRUPTCY COURT
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VERIFIED STATEMENT OF SUE FOWLER

I, Sue Fowler, being duly sworn, depose and say:

1. I am over 18 years of age and under no legal disability.
2. I make this Affidavit on my own personal knowledge.
3. I am a resident of Naples Florida, since September of 2019.
4. I am the Statutory Agent and President of Defendant Fowler & Associates, Inc.
5. As President, I am the custodian of the records of Fowler & Associates, Inc. The records of the transactions with Suarez Corporation Industries were kept in the ordinary course of business.

¹ The Debtors are SCI Direct, LLC, Case No. 17-61735; Suarez Corporation Industries, Case No. 17-61736, Retail Partner Enterprises, LLC, Case No. 17-61737, and Media Service Corporation, Case No. 17-61738.

6. I first became aware of adversary proceeding 19-06030 against Defendant Fowler & Associates, Inc., when I received the Default Judgment Entry in the mail during the week of November 18, 2019.

7. As Statutory Agent I was never served a copy of the Summons or Complaint by Certified Mail, nor did I receive a copy of the Summons or Complaint by regular mail.

8. As President of Defendant Fowler & Associates, Inc., in July of 2017, I possess personal knowledge of Defendant Fowler & Associates, Inc.'s invoices #1104734 and #1104646 totaling \$22,695.63, and its transactions giving rise to the invoices.

8. These invoices were for the renewal of Suarez Corporation Industries' existing email software licenses which were expiring. Fowler & Associates, Inc.'s invoice #1104734 dated 7-31-2017 was paid by SCI on 7-26-17 and invoice #1104646, dated 7-2-2017 was paid on 7-5-2017.

Further Affiant sayeth not.



Sue Fowler

State of Florida)
)ss
County of Collier)

SWORN to and subscribed in my presence, a Notary in and for said County and State, this

3 day of December, 2019.



LESLIE GOUNY
MY COMMISSION # GG 060852
EXPIRES: January 9, 2021
Bonded Thru Budget Notary Services


NOTARY PUBLIC